

MV 98-6

Tax Type: MOTOR VEHICLE USE TAX

Issue: Rolling Stock (Vehicle Used Interstate For Hire)

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS

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DEPARTMENT OF REVENUE	)	97-ST-0000
STATE OF ILLINOIS	)	98-ST-0000
	)	IBT 0000-0000
v.	)	
	)	Mimi Brin
"JUMPING JACK FLASH BUILDERS,	)	Administrative Law Judge
INC.",	)	
Taxpayer	)	

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Irwin D. Rozner of the Law Office of Irwin D. Rozner, for "Jumping Jack Flash Builders, Inc.";<sup>1</sup> Mark Dyckman, Special Assistant Attorney General, for Illinois Department of Revenue

**Synopsis:**

This matter comes on for hearing pursuant to "Jumping Jack Flash Builders, Inc.'s" (hereinafter referred to as "Taxpayer" or "Jumping") protest of the Illinois Department of Revenue's (hereinafter referred to as the "Department") Notice of Tax Liability (hereinafter referred to as the "NTL") for Use Tax (35 ILCS 105/1 *et seq.*), late payment penalty and interest for: 1) one ready haul skip loader, 2) one Chevrolet truck, 3)

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<sup>1</sup> The transcript and the Department's Certificates of Records (Department Ex. Nos. 1, 2, 3) identify taxpayer as "Jumpin' Jack Flash Builders, Inc." Taxpayer's documents of record (Taxpayer Ex. Nos. 1, 2,

one GMC truck and, 4) one automobile.<sup>2</sup> The taxpayer did not pay use tax to the sellers of these vehicles claiming that they were exempt therefrom as rolling stock of an interstate carrier for hire. 35 ILCS 105/3-55 (b)

A hearing on this matter was held on October 14, 1998, whereat Ms. "Carmen Crumpwinkle" testified on behalf of the taxpayer. Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in taxpayer's favor, in part, and for the Department, in part. In support thereof, I make the following findings of fact and conclusions of law:

**Findings of Fact:**

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, was established by the admission into evidence of the Audit Correction and/or Determination of Tax Due assessing use tax liabilities and statutory penalties. Department Gr. Ex. Nos. 1, 2
2. The assessments were for taxpayer's purchase from Illinois retailers of 1) a ready haul skip loader, 2) a Chevrolet truck, 3) a GMC truck and, 4) an automobile. Tr. pp. 6-8; Department Gr. Ex. 3
3. "Jumping" concedes that the automobile assessed in Department Gr. Ex. 2 is not exempt from the tax assessed. Tr. pp. 5, 10-12
4. Taxpayer was issued a Common Motor Carrier Of Property Certificate number IL.C.C. 0000 MC-CR, by the Illinois Commerce Commission, on

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3, 4, 6, 7, 8, 9) identify taxpayer as "Jumping Jack Flash Builders, Inc." For purposes of this recommendation, I shall refer to the taxpayer as "Jumping Jack Flash Builders, Inc."

<sup>2</sup> The automobile was the subject of the Audit Correction and/or Determination of Tax Due admitted as Department Gr. Ex. 2 and the only item at issue under docket 98 ST 0000. The other three items are the subject of docket 97 ST 0000 and Department Gr. Ex. 1. These matters were consolidated for hearing purposes, as the issues addressed are the same, involving the same taxpayer.

or about September xx, 19xx, which entitles taxpayer to operate as a “motor carrier in **INTRASTATE** commerce within Illinois”. (emphasis in the original) Taxpayer Ex. No. 1

5. Taxpayer has a Federal Highway Administration Certificate number MC 000000 SUB O C and O P, evidencing taxpayer’s “authority to engage in transportation as a common carrier of property by motor vehicle in interstate or foreign commerce”. Taxpayer Ex. Nos. 2, 6
6. "Jumping's" United States Department of Transportation identification number is xxxxx000000 for its commercial motor vehicles. Taxpayer Ex. No. 3
7. "Jumping" registered, on or about October x, 19xx, three additional motor carriers with the State of Illinois, for travel in the states of Illinois, Indiana and Wisconsin. Taxpayer Ex. Nos. 4, 5
8. Taxpayer purchased the ready haul loader on November 12, 1996; the Chevrolet truck on July 25, 1995; and, the GMC truck on April 22, 1996. Department Ex. No. 3

**Conclusions of Law:**

"Jumping" did not pay Illinois use tax to retailers when it purchased the three vehicles that remain at issue herein, claiming that the purchases were exempt from this tax as the rolling stock of an interstate carrier for hire. Illinois’ law which provides for this exemption states, in pertinent part:

§3-55. Multistate exemption. To prevent actual or likely multistate taxation, the tax imposed by this Act does not apply to the use of tangible personal property in this State under the following circumstances:

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(b) The use, in this State, of tangible personal property by an interstate carrier for hire as rolling stock moving in interstate commerce... .

35 ILCS 105/3-55

The Act further defines the rolling stock exemption as:

§3-60. The rolling stock exemption applies to rolling stock used by an interstate carrier for hire, even just between points in Illinois, if the rolling stock transports, for hire, persons whose journeys or property whose shipments originate or terminate outside Illinois.

35 ILCS 105/3-60

Finally, to be considered an interstate carrier for hire, the taxpayer must either possess an Interstate Commerce Commission Certificate of Authority, an Illinois Commerce Commission Certificate of Authority, or be a carrier recognized by the Illinois Commerce Commission. 86 Ill. Admin. Code ch. I, sec. 130.340

At hearing, taxpayer presented, through the credible testimony of Ms. "Carmen Crumpwinkle" and through documentation admitted into the record, evidence that it is an interstate carrier for hire, as it is clear that it carries, for remuneration, the goods of others from Illinois across state lines to ultimate destinations in Indiana and Wisconsin, and it has the necessary certifications. It is also clear from the same evidence, that the equipment it uses to move these goods fall within the statutory definition of the rolling stock exemption, that is, taxpayer's movement of the goods either originate or terminate outside Illinois.

Therefore, the issue to be decided here is whether the specific vehicles assessed qualify for this particular exemption. To support its position that the exemption applies to these properties, taxpayer presented documentation in the form of invoices (Taxpayer Group Exs. 7, 8, 9) supported by the credible testimony of Ms. "Crumpwinkle", showing

that, beginning immediately after purchase, each vehicle was used in a qualifying manner. Therefore, taxpayer overcame “the presumption of validity attached to the Department’s corrected returns” with “competent evidence, identified with their books and records... .” Copilevitz v. Department of Revenue, 41 Ill.2d 154 (1968); Masini v. Department of Revenue, 60 Ill. App.3d 11 (1<sup>st</sup> Dist. 1978)

**WHEREFORE**, for the reasons stated above, it is my recommendation that the assessment of the automobile represented in Department docket number 98 ST 0000 be finalized, and that the assessments of the three vehicles represented by Department docket number 97 ST 0000 be cancelled.

December 1, 1998

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Mimi Brin  
Administrative Law Judge